

OPEN MEETING ITEM



0000126143

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ARIZONA CORPORATION COMMISSION

Executive Director
RECEIVED

2011 JUN -6 A 10:11

AZ CORP COMMISSION
DOCKET CONTROL

DATE: JUNE 6, 2011
DOCKET NO.: W-01337A-10-0375

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

RINCON RANCH ESTATES WATER COMPANY, INC.
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JUNE 15, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 21, 2011 and JUNE 22, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

JUN 6 2011

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

4 GARY PIERCE - Chairman
5 BOB STUMP
6 SANDRA D. KENNEDY
7 PAUL NEWMAN
8 BRENDA BURNS

9 IN THE MATTER OF THE APPLICATION
10 OF RINCON RANCH ESTATES WATER
11 COMPANY, INC., FOR CANCELLATION
12 OF ITS CERTIFICATE OF CONVENIENCE
13 AND NECESSITY AND TRANSFER OF
14 ITS UTILITY ASSETS TO THE CITY OF
15 TUCSON.

DOCKET NO. W-01337A-10-0375

DECISION NO. _____

ORDER

16 Open Meeting
17 June 21 and 22, 2011
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 * * * * *

23 FINDINGS OF FACT

24 Procedural History

25 1. On September 10, 2010, Rincon Ranch Estates Water Company, Inc. ("Rincon" or
26 "Company"), filed with the Arizona Corporation Commission ("Commission") an application for
27 approval to transfer its assets and operations to the City of Tucson ("City") and to cancel the
28 Company's Certificate of Convenience and Necessity ("CC&N") ("Application").

29 2. On December 7, 2010, Rincon filed the Affidavit of Dale Calvert, Rincon's President,
30 stating that notice of the Application was mailed to all of Rincon's customers on September 7, 2010.
31 No customer comments were filed with the Commission in response to the notice.

32 3. On December 21, 2010, the Commission's Utilities Division ("Staff") filed its Staff
33 Report recommending approval of the Application ("Original Staff Report").

1 4. Pursuant to a Procedural Order filed January 5, 2011, a Procedural Conference was
2 held on January 26, 2011. During the Procedural Conference, the parties stated that they did not
3 believe that a hearing on this matter was necessary, but the Company was requested to file additional
4 information regarding the reasons for the Company's sale of its assets to the City.

5 5. On February 10, 2011, the Company filed an Affidavit from Mr. Calvert containing
6 the requested information.

7 6. On February 22, 2011, based on the information provided by the Company, Staff filed
8 a Supplemental Staff Report again recommending approval of the Application.

9 **Background**

10 7. Rincon is an Arizona corporation that provides water utility service to approximately
11 245 customers in Pima County, east of Tucson, Arizona. The Company's original CC&N was
12 granted by Decision No. 21480 (November 26, 1951). The Company's current rates and charges
13 were established in Decision No. 63714 (June 6, 2001).

14 8. The City, in its capacity as a municipal corporation providing water utility service, is
15 exempt from Commission regulation pursuant to Article XV, Section 2 of the Arizona Constitution.

16 9. According to the Affidavit of Dale Calvert filed February 10, 2011, Rincon first
17 entered into negotiations to sell the Company's system assets to the City in 2004. Mr. Calvert states
18 that the City was interested in the system "because they had pressure zones that were interrupted by
19 our system. They have one reservoir adjacent to the northwest corner of our system and another one
20 a mile west of our system. They have 8-inch lines adjacent to both the north and south boundaries to
21 which they wished to connect."¹

22 10. Rincon's prior owner and operator, Frank Calvert, Dale Calvert's father, passed away
23 on August 7, 2007. Dale Calvert and his brother continued with the Company's operations with the
24 assistance of a certified operator.²

25 11. According to the Supplemental Staff Report, Rincon's Well No. 1 failed in 2007,
26 leaving only one well to provide water to its customers. Prior to his death, Frank Calvert had
27

28 ¹ Affidavit of Dale Calvert filed February 10, 2011, paragraph 2.

² *Id.*, paragraph 4.

1 considered drilling a new well, but, Staff explained, “[a]lthough Frank Calvert identified a location
 2 for its proposed well site, the Company concluded that incurring significant capital costs for drilling a
 3 new well may not result in an enhanced water production capacity. As a result, the Company was
 4 compelled to rely on an interconnection with the City.”³ According to the Staff Report, Rincon drew
 5 between 40 to 45 percent of its water from the City interconnection in 2008 and 2009.⁴ Because of
 6 the heavy reliance on the interconnection, Rincon realized that, should the other well fail, it would
 7 need to rely on the interconnection entirely, but the Company was uncertain whether the City would
 8 be able to meet these increased demands.⁵

9 12. In addition to these problems, Mr. Calvert stated that the Company was approached by
 10 a large church and Wal-Mart for water service, but their addition to the system would have
 11 exacerbated the situation.⁶ Staff also notes that the Company has experienced marginal water
 12 pressure levels in portions of its system.⁷

13 13. Mr. Calvert stated that after his father’s death, he continued to negotiate with the City
 14 for the purchase, but the City suspended the negotiations in December 2007. He hoped to sell the
 15 system to others, but stated that there was little interest.⁸ The Application also states that Frank
 16 Calvert’s surviving family members do not wish to continue to operate the Company.⁹

17 14. In 2010, the City again approached the Company about purchasing the Company’s
 18 assets and the parties reached an agreement. Accordingly, the Company and the City, pursuant to
 19 City of Tucson Resolution No. 21564 dated June 8, 2010, entered into an Agreement for Purchase
 20 and Sale of Business Assets of Rincon Ranch Estates Water Company (“Purchase Agreement”).¹⁰

21 ...

22
 23 ³ Supplemental Staff Report, page 1.

24 ⁴ Original Staff Report, Exhibit A, page 2. Staff states that, “[t]his interconnection has been in place for somewhere
 25 between 25 and 35 years. The Company believes that the interconnection was established to provide an emergency
 source of water. However, according to the Company, in recent years it began drawing substantial water from the
 interconnection because one of its wells needed to be replaced and it did not make sense to drill a new well while
 negotiations were underway regarding a possible City acquisition of the Company.”

26 ⁵ Supplemental Staff Report, page 1.

27 ⁶ Affidavit of Dale Calvert filed February 10, 2011, paragraph 9.

28 ⁷ *Id.*, and Affidavit of Dale Calvert filed February 10, 2011, paragraph 13.

⁸ Affidavit of Dale Calvert filed February 10, 2011, paragraphs 7, 8.

⁹ Application, page 2.

¹⁰ *Id.*, Exhibit A.

1 15. On September 7, 2010, the Company sent notice to its customers that it was applying
2 to the Commission for the sale and transfer of its assets to the City of Tucson,¹¹ and on September 9,
3 2010, Rincon filed its Application with the Commission.

4 16. Immediately after the Purchase Agreement had been signed, the City requested
5 permission to begin installation of a 6-inch interconnection from the south and to rezone its water
6 system at a high pressure. The Company was hesitant to allow the City to proceed until the
7 transaction was closed because of potential liability issues.¹² Staff stated that in order “to mitigate the
8 risk of a catastrophic system failure, the Company was compelled to transfer its assets to the City
9 prior to Commission authorization.”¹³ The transaction between Rincon and the City closed on
10 November 2, 2010, and the City took over the Company’s assets.¹⁴ Mr. Calvert avowed, “I firmly
11 believed that the water system faced a serious failure to be able to continue to provide adequate and
12 reliable water service to its customers, and that transferring control of the water system to the City of
13 Tucson so they could proceed with their interconnection upgrade was in the best interests of the
14 customers of the water company.”¹⁵

15 17. Staff reviewed the information provided by the Company and concluded that Rincon
16 acted in the public interest. In its Supplemental Staff Report, Staff explained:

17 As previously discussed in the [Original] Staff Report in this proceeding, the
18 Company had no willing operator and manager upon the death of Frank Calvert.
19 Further, the Company lacked adequate financial resources and technical expertise
20 to enhance its productive capacity. Finally, the City has the necessary financial
21 and managerial resources to enhance the water system, for the benefit of the
22 Company’s existing ratepayers and prospective customers. Although Staff
concludes that Rincon Ranch’s transfer of its assets without Commission
authorization is a violation of A.R.S. § 40-285, Staff agrees with the Company
that it acted in the public interest. Accordingly, Staff continues to recommend
Commission approval of the Company’s proposed sale and transfer of Rincon
Ranch’s assets to the City.¹⁶

23 _____
24 ¹¹ Affidavit of Dale Calvert filed December 7, 2010, paragraph 3, and Application, Exhibit B. In addition to the written
25 notice, during the January Procedural Conference, Rincon’s counsel noted that “prior to the City of Tucson actually
taking over the system, they had a big open house, kind of a town hall meeting out in the service area. [Additionally,] we
got no protests from the notice that we sent to the customers about the transfer; and then separately, Tucson sent out
26 notices to every customer out there.” Procedural Conference Transcript at page 5.

26 ¹² Supplemental Staff Report, page 1.

27 ¹³ *Id.*, page 2.

28 ¹⁴ Affidavit of Dale Calvert filed December 7, 2010, paragraph 5. According to Rincon’s counsel, the City began to stage
its construction area that same day. Procedural Conference Transcript at page 8.

¹⁵ *Id.*, paragraph 16.

¹⁶ Supplemental Staff Report, page 2.

1 18. Staff recommends that no penalties should be imposed for Rincon's violation of
2 A.R.S. § 40-285.¹⁷

3 **The Transaction**

4 19. According to the Staff Engineering Report, Rincon's system (at the time of its sale to
5 the City) consisted of two wells, one 5,000 gallon pressure tank, three storage tanks and a distribution
6 system serving approximately 245 metered customers. In addition, Rincon had in place an
7 interconnection with the City of Tucson.

8 20. According to the Purchase Agreement, Rincon will transfer to the City all of its system
9 assets, including real property interests, for \$300,000, in installments of \$60,000 per year for five
10 years. The Staff Report indicates that Rincon's assets had a net book value \$144,347 as of November
11 26, 2010. Staff notes, however, that Rincon "contends that it cannot determine if any gain or loss will
12 result from this transaction, due to uncertainty relating to accumulated sales costs, sales expenses and
13 closing costs."¹⁸

14 21. The Company states that as of the transaction's closing date, there were no outstanding
15 or un-refunded advances in aid of construction contracts and no outstanding balances on its customer
16 deposit accounts. Additionally, the Company issued refund checks to any customers who had pre-
17 paid their monthly water bills for the period beyond November 2, 2010.¹⁹

18 22. The Original Staff Report noted that upon transfer, a customer with a monthly average
19 consumption of 14,484 gallons will experience a \$1.29 decrease in their monthly water bill, from
20 \$60.29 to \$59.00.

21 23. Staff concludes that Rincon's transfer of assets to the City will not negatively impact
22 existing ratepayers.

23 **Miscellaneous**

24 24. Staff indicated that, according to an Arizona Department of Environmental Quality
25 ("ADEQ") compliance report dated December 14, 2010, the Company's system (ADEQ Public Water
26 System No. 10-100) was delivering water that met ADEQ water quality standards and regulations.

27 _____
¹⁷ Original Staff Report, page 3.

28 ¹⁸ *Id.*, page 2, and Purchase Agreement Section 3.

¹⁹ Affidavit of Dale Calvert filed December 7, 2010, paragraphs 6-8.

1 25. The Staff Report states that the Company is located in the Tucson Active Management
2 Area (“AMA”) and is subject to AMA reporting and conservation requirements. Staff received an
3 Arizona Department of Water Resources (“ADWR”) compliance status report on October 7, 2010, in
4 which ADWR reported that Rincon is in compliance with departmental requirements governing water
5 providers and/or community water systems.

6 26. The Company reported the water loss was 7.16 percent, and within acceptable limits.

7 27. Staff stated that, according to the Compliance Division database, the Company has no
8 delinquent Commission compliance items.

9 **Recommendations**

10 28. Staff recommends that the Commission approve Rincon’s Application to transfer
11 assets to the City, to cancel the Company’s CC&N, and authorize the Company to engage in any
12 transactions and to execute or cause to be executed any documents necessary to effectuate the
13 authorization requested in the Application, subject to the condition that the Company file with the
14 Commission the closing documents related to this transaction within 30 days of the effective date of
15 the effective date of the transaction. Because the transaction between Rincon and the City has
16 already been consummated, we believe it reasonable to require that Rincon file the closing documents
17 within 30 days of the effective date of this Decision.

18 29. Based on the record in this matter, we believe Rincon’s Application for authority to
19 transfer its water system and assets to the City, and to cancel its CC&N, is in the public interest and
20 should be approved, subject to compliance with Staff’s recommendation.

21 30. Although the law requires companies to seek Commission approval prior to
22 transferring assets, in this case we believe the necessity to consummate the sale and transfer on an
23 expedited basis is understandable and we agree with Staff that no fines or penalties should be
24 imposed against Rincon.

25 31. Further, because, 1) notice of the sale and transfer was provided to Rincon’s customers
26 as required under Arizona law; 2) the notice sent to customers provided that Commission approval of
27 the Application may be given without a hearing; 3) a public meeting was held by the City to which
28 customers were invited to comment on the sale and transfer; 4) no customer objected to the sale and

1 transfer; 5) we have found the transfer to be in the public interest; and 6) we have found that there
2 should be no penalties imposed against Rincon for effecting the sale and transfer pursuant to A.R.S. §
3 40-285 prior to receiving Commission approval, we find that a hearing in this matter is not necessary.

4 **CONCLUSIONS OF LAW**

5 1. Rincon is a public service corporation within the meaning of Article XV of the
6 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

7 2. The Commission has jurisdiction over Rincon and the subject matter of the
8 Application.

9 3. Notice of the Application was provided as required by law.

10 4. There is a continuing need for water utility service in Rincon's certificated area.

11 5. The City of Tucson is a fit and proper entity that is ready, willing and able to assume
12 the responsibilities of providing water utility service within Rincon's existing certificated area.

13 6. For reasons stated above, a hearing in this matter is not necessary.

14 7. Staff's recommendation for approval of the Application, subject to compliance with its
15 sole condition, is reasonable and should be adopted.

16 **ORDER**

17 IT IS THEREFORE ORDERED that the Application of Rincon Ranch Estates Water
18 Company, Inc., for authority to transfer its water system and assets to the City of Tucson, and to
19 cancel its CC&N, is in the public interest and is hereby approved, subject to compliance with Staff's
20 recommendations.

21 IT IS FURTHER ORDERED that Rincon Ranch Estates Water Company, Inc., is authorized
22 to engage in any transactions and to execute or cause to be executed any documents in order to effect
23 the authorizations granted.

24 IT IS FURTHER ORDERED that Rincon Ranch Estates Water Company, Inc., shall file with
25 Docket Control, as a compliance item in this docket, copies of all documentation transferring
26 ownership of its water system and assets to the City of Tucson, within 30 days of the effective date of
27 this Decision.

28 ...

1 IT IS FURTHER ORDERED that, upon filing of the documentation required by Staff's
2 recommendation, the Certificate of Convenience and Necessity of Rincon Ranch Estates Water
3 Company, Inc., shall be cancelled without further action of the Commission.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7
8 CHAIRMAN _____ COMMISSIONER

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____, 2011.

16 _____
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20
21 DISSENT _____

22
23
24
25
26
27
28

1 SERVICE LIST FOR: RINCON RANCH ESTATES WATER COMPANY, INC.

2 DOCKET NOS.: W-01337A-10-0375

3
4 Hugh Holub
5 LAW OFFICES OF HUGH HOLUB
6 P. O. Box 4773
7 Tubac, AZ 85646

8
9 Janice Alward, Chief Counsel
10 ARIZONA CORPORATION COMMISSION
11 1200 W. Washington Street
12 Phoenix, AZ 85007

13
14 Steven M. Olea, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 W. Washington Street
18 Phoenix, AZ 85007

19
20
21
22
23
24
25
26
27
28